Editor's note: Reconsideration and request for hearing denied by order dated June 10, 1980; Appealed - reversed, Civ.No. 80-431-HEC (D.Nev. June 30, 1983)

NEVADA PACIFIC CO., INC.

IBLA 80-297 Decided March 24, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring a mining claim abandoned and void. N MC 127437.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation -- Federal Land Policy and Management Act of 1976: Rules and Regulations

   43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Nov. 7, 1979, the recordation date of the notice of location is Nov. 7, 1979. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Nov. 7, 1979, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claim must be deemed abandoned and void.

2. Estoppel -- Federal Employees and Officers: Authority to Bind Government

Reliance on erroneous information provided by Federal employees cannot create any rights not authorized by law.

APPEARANCES: John W. Bonner, Esq., Las Vegas, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated December 19, 1979, of the Nevada State Office, Bureau of Land Management (BLM), declaring Community No. 3 placer mining claim abandoned and void for failure to timely file a notice of location, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulation 43 CFR 3833.1-2.

The facts are as follows: Community No. 3 placer mining claim was located by appellant on November 20, 1946, and therefore prior to October 21, 1976. Under 43 CFR 3833.1-2 1/ owners of mining claims located prior to October 21, 1976, must file location notices with BLM on or before October 22, 1979. The location notice for appellant's claim was received for recording by BLM on October 18, 1979. However, the location notice was not accompanied by the service fee, $5 ($5.00 per claim) as required by 43 CFR 3833.1-2(d). 2/ On November 2, 1979, BLM, or more specifically, Loyd C. Miller, Chief, Branch of Records and Data Management, wrote to appellant advising that the service fee should have accompanied its filing and suggesting that unless appellant remit the required amount within 15 days from receipt of his letter, appellant's claim would be declared null and void. On November 5, 1979, appellant filed the required payment. However, on December 19, 1979, BLM, per William K. Stowers, Acting Chief, Land and

1/ 43 CFR 3833.1-2 provides in pertinent part:

"(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, excluding land within units of the National Park System established before September 28, 1976, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law * * *" [Circular No. 2444-A].

2/ 43 CFR 3833.1-2(d) provides: "Each claim or site filed shall be accompanied by a one time $5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner."

Mineral Operations, issued the above decision holding appellant's claim abandoned and void 3/ for failure to comply with 43 CFR 3833.1-2(d).

[1] The regulation which was relied on by BLM and is controlling here is 43 CFR 3833.1-2(d), supra.

Both sentences of that regulation refer to the requirement that the service fee must accompany the claim or site filed, and the second sentence mandates rejection and return to its owner, of a filing not accompanied by the fee.

In a recent decision, Joe B. Cashman, 43 IBLA 239 (1979), we construed that regulation in a manner which controls the disposition of the case at bar. We stated at 43 IBLA 240:

> 43 CFR 3833.1-2 requires that, for mining claims, millsites, or tunnel sites located prior to October 21, 1976, a copy of the location notice must be recorded with the proper office of BLM within 3 years, or before October 22, 1979. For such claims or sites located after October 21, 1976, the location notice must be recorded in the proper BLM office within 90 days following date of location. 43 CFR 3833.1-2(d) states that each claim or site filed with BLM shall be accompanied by a $5 service fee. This is a mandatory requirement. Without payment of the filing fee, there is no recordation. Thus, as the filing fee for the notices of Apex No. 1 and Apex No. 2 millsites was not paid until February 10, 1978, it must be held that the date of recordation of these claims with BLM cannot be considered to have occurred earlier than that date. [Emphasis in original.]

It necessarily follows that the recordation date in the case at bar is November 7, 1979, the date the filing fees were paid. In the circumstances under 43 CFR 3833.1-2, appellant's filing was not timely and the mining claim must be deemed abandoned and void, as required by FLPMA. The filing fee was expressly found to be reasonable in Topaz Beryllium Co. v. United States, 479 F. Supp. 309, 316 (D. Utah 1979).

3/ The mining claim was declared null and void by decision of August 28, 1973, 12 IBLA 393, 80 I.D. 571 (1973). That decision was sustained by the decision of the U.S. District Court for Nevada, Civil No. LV-74-9 BRT on June 6, 1975, but was reversed by the 9th Circuit sub nom., Block v. Andrus, D.C.-LV-74-9, March 29, 1977, and by order of the District Court of Nevada, Civil No. LV-74-9 BRT of May 10, 1977, in accordance with the mandate of the 9th Circuit was "remanded to the Secretary of the Interior for further proceedings."

[2] Appellant's principal contention in this appeal focuses on the letter written by the BLM official which suggested that if appellant tendered the required fee within 15 days of receipt of BLM's letter, appellant's location notice would be deemed filed within the requirements of the code. According to appellant because he complied with the officers directive, BLM should be estopped from declaring his claim abandoned and void.

The argument advanced by appellant is without merit. 4/ Reliance upon information or opinion of any officer, agent, or employee cannot operate to vest any right not authorized by law. 43 CFR 1810.3. Cf. Union Oil Co. v. Morton, 512 F.2d 743, 748 (9th Cir. 1975). The courts are particularly reluctant to apply estoppel against the Government in public land matters. (See INS v. Hibi, 414 U.S. 5, 8 (1973).

The reason for this rule is easily discerned. Thus, it has long been recognized that the Department of the Interior administers the public land of the United States in trust for all of its citizens. If, through the unauthorized actions of an individual employee, rights not granted by law could be acquired in public lands, the rights of the general populace would be thereby denigrated. In order to protect these general rights, courts have consistently held that the Government cannot be estopped by unauthorized actions or advice of its employees to require full compliance with the applicable laws and the regulations adopted pursuant thereto. See, e.g., Atlantic Richfield Co. v. Hickel, 432 F.2d 587, 591-92 (10th Cir. 1970).

Consequently, the letter written by the BLM official could not operate to extend the filing period set by 43 CFR 3833.1-2.

4/ Appellant also argues that the sanctions approved by the Board are not authorized by 43 CFR 3833.1-2. In other words, he contends that while the code does provide that a $5 fee shall accompany the filing, no penalty or sanctions are provided for not including the payment. Apparently, appellant finds support for his argument in the 1978 CFR version which states: "Each claim or site filed shall be accompanied by a $5 service fee which is not returnable." 43 CFR 3833.1-2. While appellant's argument may have been persuasive before the above stated section's amendment, it no longer is because 44 FR 9720 (Feb. 14, 1979) amended the section to include another sentence which states: "A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner."

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge